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10/531,138	09/16/2005	Nicholas Andrew Drought	920602-99275	4556
23644 7590 02/04/2011 BARNES & THORNBURG LLP P.O. Box 2786 CHICAGO, IL 60690-2786				
EXAMINER KUMAR, RAKESH				
ART UNIT 3651		PAPER NUMBER		
NOTIFICATION DATE 02/04/2011		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patent-ch@btlaw.com

# Office Action Summary

**Application No.**

10/531,138

**Applicant(s)**

DROUGHT ET AL.

**Examiner**

RAKESH KUMAR

**Art Unit**

3651

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6-11, 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 12 and 16-30 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **Final Rejection**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,19,27 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claim 1 and 19. Claim 1 recites the limitations "either one of the abutment means or the receiving means being moveable to cause a collapsing force to be exerted on a selected blister," in line 6. It is unclear as how the receiving means characterized by the members (10 and 26) are moveable to cause a collapsing force to be exerted on the selected blister. It is generally understood and broadly construed that the collapsing force is exerted only by the abutment means (plunger 30) of the applicant and the receiving means (10 and 26) only serve to hold the selected blister in registry with the abutment means (30).

Applicants disclosed Figures do not show the receiving means moveable to cause a collapsing force to be exerted on a selected blister pack. As is disclosed in the drawings the receiving means engage the selected blister pack, the collapsing force is exerted by the abutment means (plunger 30). Similarly see claim 19. The claim is

being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Appropriate action is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,5,12 and 15-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honan (US 5,348,158) in view of Paulos (US 5,302,048).

Referring to claims 1 and 19. Honan discloses an apparatus for releasing tablets from a blister pack (Figure 1) having a plurality of tablets contained in corresponding blisters, the apparatus comprising abutment means (including 30-33 Figure 7), receiving means (including 13 and 12; Figure 1) for receiving a blister pack with any selected one of a plurality of blisters of the pack in registry with the abutment means (including 30-33 Figure 7; see Figure 6), the receiving means (including 13 and 12; Figure 1) comprising a pair of opposed jaws (member 13 and 12), the jaws being moveable relative to one another (see Figure 1 and 2), either one of the abutment means (32) and the receiving means (including 13 and 12) being moveable (in this instance the abutment means

referring to members 30-33; Figure 7) to cause a collapsing force to be exerted on a selected blister (15; Figure 6) thereby to release a tablet (16) from the blister (15),

wherein the apparatus includes first biasing means (22) integrally formed with a jaw (member 12 and 13) for urging the receiving means into engagement with the blister pack (see movement of members 13 and 12 engage the contents of the blister pack (Figure 1), and the receiving means (including 13 and 12; Figure 1) is so arranged that said engagement releasably retains, and locates, the blister pack in position (by circumferential ridges of member 13; see Figure 1) relative to the abutment means (including 30-33 Figure 7) prior to the release of the tablet (16), and wherein the first biasing means (22) comprises a resiliently flexible substantially U-shaped connecting arm (see close up of member 22; Figure 4) that is operable to bias the jaws (member 13 and 12) into a neutral position (as in Figure 4), in which they are spaced apart and opposed so as to be able to receive a blister pack allowing a user to move the opposed jaws (member 12 and 13) against the action of the biasing means (22) by inserting a blister pack (15) into the space between the jaws (member 12 and 13)

wherein the abutment means (30-33) comprises a plunger (30-32) moveably mounted on a jaw (12) of the receiving means (12 and 13), and

wherein the apparatus includes a further biasing means (33) which acts between the plunger (portion 30; Figure 6) and the jaw (12) in which it is mounted so as to urge the plunger (30-32) away from the other jaw (13).

Honan discloses the biasing means as being a spring; Honan does not specifically disclose the biasing means as comprising a resiliently compressible sleeve around the plunger.

Paulos discloses an apparatus (Figure 1) wherein the movement of piston (40) is biased by a resiliently compressible sleeve (72 and 74) which extends around the plunger (82). The resiliently compressible sleeve (72 and 74) serves as a biasing spring to retain the position of the plunger at a specific location as the plunger cycles through the compressions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Honan to have included a resiliently compressible sleeve as the biasing agent for the movement of the plunger as taught by Paulos because the resiliently compressible material would not deform upon repeated use thus providing a user smoother operation of the apparatus.

Referring to claims 2,20. Honan discloses an apparatus wherein the abutment means (including 30-33 Figure 7) is moveable towards a blister of a pack retained in the receiving means (member 13 and 12).

Referring to claims 3,21. Honan discloses an apparatus wherein the receiving means (member 13 and 12) is arranged to receive a blister pack so that the selected

blister faces the abutment means (including 30-33 Figure 7), the latter being operable to exert said collapsing force by directly engaging the blister (Figure 6).

Referring to claims 5 and 22. Honan discloses an apparatus wherein one of the jaws (12; Figure 6) is so shaped as to locate a selected blister in registry with the abutment means (including 30-33 Figure 7), and has a recess of a complimentary shape to that of a blister (see blister resting in Figure 6).

Referring to claims 7,23. Honan discloses an apparatus wherein the biasing means (22) is integrally formed with a jaw (12 and 13).

Referring to claims 8,24,25 and 30. Honan discloses an apparatus wherein the biasing means (22) comprises a resiliently flexible connecting arm (see ledge in Figure 6). U shaped in Figure 4.

Referring to claim 12. Honan discloses an apparatus wherein the apparatus includes a further biasing means (33; Figure 7) which acts between the plunger (31 and 32) and the jaw (12) in which it is mounted so as to urge the plunger away from the other jaw (13; Figure 6).

Referring to claim 16. Honan discloses an apparatus wherein the plunger (31 and 32) has a head (30), to be pressed by the user, which is considerably larger than a blister (Figure 6).

Referring to claim 26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Honan in view of Paulos to have included the spring coefficient of the resiliently compressible sleeve to be such that a small child can not use the apparatus because it would provide child safety.

Referring to claim 27. Honan discloses an apparatus wherein a base (35; Figure 5) for supporting the jaws (12 and 13) on a supporting surface (such as a table), the base (35) including an opening (20) and a chute (thickness of member 20) for collecting a tablet released from a blister pack to the opening.

Referring to claim 28. Honan discloses an apparatus wherein the plunger has a head (30), to be pressed by the user, which is considerably larger than a blister (see Figure 6).

Referring to claim 29. Honan discloses an apparatus wherein one of the jaws (11) of the receiving means includes a camming surface (see triangular projections from the bottom surface of member 12; Figure 1) for engagement by a blister on lateral movement, to move the jaws apart against the biasing means (22).



***Allowable Subject Matter***

Claim 15 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 11/19/2010 have been fully considered but they are not persuasive. See modified rejections above.

The applicant argues "Honan does not disclose biasing means for urging the receiving means into engagement with the blister pack." It is in the view of the Office the hinge member (22) of Honan acts as a biasing means to bias the opposing jaws into engagement with the blister pack as can be see in the open view of the disclosed dispenser in Figure 3 (Honan) and the biased view as shown in Honan view in Figure 6. The applicant has not differentiated how the biasing means as disclose in the claimed invention is materially different from the way the apparatus of Honan functions, thus according to the broad interpretation of the claimed limitations it is understood the hinge

member (22) functions as a biasing member to aid in the biasing of the opposing jaws (12) and (13) into engagement with the blister pack.

The applicant further argues "Honan does not disclose biasing means operable to bias jaws into a neutral position, in which they are spaced apart so as to be able to receive a blister pack." The applicant is directed to Honan's Figure 3 wherein the biasing means (22) is used to bias jaws (12 and 13) into a neutral position (open position) in which they are spaced apart so as to be able to receive a blister pack (See Figure 3).

Claim 1 recites the limitations "either one of the abutment means or the receiving means being moveable to cause a collapsing force to be exerted on a selected blister," in line 6. It is unclear as how the receiving means characterized by the members (10 and 26) are moveable to cause a collapsing force to be exerted on the selected blister. It is generally understood and broadly construed that the collapsing force is exerted only by the abutment means (plunger 30) of the applicant and the receiving means (10 and 26) only serve to hold the selected blister in registry with the abutment means (30).

Applicants disclosed Figures do not show the receiving means moveable to cause a collapsing force to be exerted on a selected blister pack. As is disclosed in the drawings the receiving means engage the selected blister pack, the collapsing force is exerted by the abutment means (plunger 30). Similarly see claim 19.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571) 272-8314. The examiner can normally be reached on M-F 8 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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